Feds Ask Court to Dismiss Suit Challenging Constitutionality of Consumer Financial Protection Bureau

November 27, 2012 - Last June, a lawsuit was filed by the State Bank of Big Spring, TX challenging the constitutionality of the formation and operation of the CPFB, as well as the recess appointment of Richard Cordray to head the agency. It was absolutely certain that the government would fight the suit. And this week, the feds came out swinging filing a motion to dismiss. But the government isn't saying that making the claim that the plaintiffs in the case are wrong in their claims about the CPFB. Instead, they are making the argument that they have no "standing" to make their claims.

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Federal courts have long held that in order to file a lawsuit against the government, those filing the suit have to have "standing" in the case. By that, they mean that the filing party needs to have experienced some form of injury as a result of the government's actions. In this case, those injuries would be financial in nature.

What this means is that simply because you believe that something the government is doing is unconstitutional, unless you have been harmed by the government's actions yourself, the courts have to decide first if you have standing to make your argument. If not, then they won't even listen to you.

In my humble opinion the courts have been wrong on this based on one simple fact. Every American has a real interest in the Constitution and its enforcement. And when the Constitution isn't enforced properly, every American suffers. Unfortunately, I don't wear a black robe and sit on a federal bench, so there isn't much that I can do about that.

What the court will do in this case is still unknown. The motion to dismiss listed 29 different federal attorneys. And those attorneys attempted to dismantle all of the arguments make by the lead plaintiffs as well as several states that have also now joined the suit.

In a nutshell, the government is arguing that many of the claims made by the plaintiffs have no standing because the CPFB has not used its authority to injure them. And they go on to state that anything that the agency may do in the future is simply speculative; which means that the parties would have to wait and refile at a later date if their "speculations" actually come to pass.

What may cause the court to view things differently is that the CPFB was given extremely broad powers over financial markets, in a way that has never been attempted before. That could cause them to look at this case differently. In any event, there is little doubt that regardless of the way the case is decided at the circuit and appellate levels, an attempt will be made to eventually bring the case to the Supreme Court. That's a process that could take several years. In the meantime, the CPFB is issuing rules and enforcing the law as it interprets it. In that role, the agency is already assessing fines. If anyone who gets hit with one of those fines decides to take the matter to court, the entire "standing" argument will go right out the window.

Look for this issue to be in the news for some time. The actions of the CPFB impact credit, interest rates and the services your bank can provide.

byJim Malmberg
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